

**FILED**

**MAY 07 2014**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF BERRY PETROLEUM COMPANY, LLC, A WHOLLY OWNED SUBSIDIARY OF LINN ENERGY, LLC, AS SUCCESSOR IN INTEREST TO BERRY PETROLEUM COMPANY, FOR AN ORDER FORCE-POOLING THE INTERESTS OF ALL OWNERS REFUSING OR FAILING TO BEAR THEIR PROPORTIONATE SHARE OF THE COSTS OF DRILLING AND OPERATING THE WELLS LOCATED IN THE DRILLING AND SPACING UNITS IN THE E½ OF SECTION 5 AND ALL OF SECTION 7 IN TOWNSHIP 6 SOUTH, RANGE 4 WEST, USM, DUCHESNE COUNTY, UTAH.

**AMENDED REQUEST FOR  
AGENCY ACTION**

**Docket No. 2014-012**

**Cause No. 272-04**

Berry Petroleum Company, LLC, a wholly owned subsidiary of LINN Energy, LLC, as successor in interest to Berry Petroleum Company ("Petitioner"), by and through its attorneys, Holland & Hart LLP, hereby amends its Request for Agency Action filed January 10, 2014, to revise the property description to remove the 8 wells that were drilled in 2010 located in the W½ of Section 5, Township 6 South, Range 4 West, USM.

Additionally, Petitioner is amending its Request to ask that the this order be made effective as of the effective dates identified in the spacing request in Docket No. 2014-004, Cause No. 272-03 (i.e., as of the date of first production for each of the wells located in the respective drilling units or, for the wells that have not yet began producing, the date the spacing order is issued).

The heading above has been amended to accurately reflect these changes, and, in the interests of clarity and in order to provide complete notice of the contents of the amended request, Petitioner restates its request in its entirety as follows:

Petitioner, pursuant to Utah Code Ann. §§ 40-6-5 and 40-6-6.5, hereby requests the Board of Oil, Gas and Mining (the “Board”) to enter an order force-pooling the interests of all owners refusing or failing to bear their proportionate share of the costs of drilling and operating in the drilling and spacing units located in the E½ of Section 5 and all of Section 7, Township 6 South, Range 4 West, USM (the “Subject Lands”).

In support of its Amended Request for Agency Action (“Request”), Berry respectfully states and represents:

1. Petitioner is a limited liability company in good standing having its principle place of business in Denver, Colorado.

2. The Board has jurisdiction of the parties and of the subject matter of this Request pursuant to Utah Code Ann. § 40-6-1, *et seq.*

3. The Subject Lands are within the area generally known as the Brundage Canyon Field. The oil and gas in the Subject Lands is owned by the United States of America, and the mineral interest underlying the Subject Lands has been leased under United States Oil and Gas Lease UTU-8894A. Petitioner owns a majority of the working interest in this lease.

4. Petitioner is the operator of the following wells located on or proposed for the Subject Lands:

<u>Well Name</u>	<u>Status</u>	<u>Initial Production</u>
a. Federal 1-5D-64	Producing	09/17/13
b. Federal 2-5D-64	Producing	09/17/13
c. Federal 7-5D-64	Producing	09/13/13
d. Federal 8-5D-64	Producing	10/01/13
e. Federal 9-5D-64	Permit Pending	
f. Federal 10-5D-64	Permit Pending	
g. Federal 15-5D-64	Permit Pending	
h. Federal 16-5D-64	Permit Pending	
i. Federal 6-7-64	Producing	10/20/13
j. Federal 3-7D-64	Producing	10/27/13
k. Federal 4-7D-64	Producing	10/20/13
l. Federal 5-7D-64	Producing	10/20/13

m.	Federal 2-7-64	Producing	11/04/13
n.	Federal 1-7D-64	Producing	11/04/13
o.	Federal 12-7D-64	Producing	10/09/13
p.	Federal 11-7D-64	Producing	10/09/13
q.	Federal 13-7D-64	Producing	10/09/13
r.	Federal 14-7D-64	Producing	10/09/13
s.	Federal 7-7D-64	Producing	11/04/13
t.	Federal 8-7D-64	Producing	11/05/13
u.	Federal 9-7D-64	Producing	11/05/13
v.	Federal 10-7D-64	Producing	11/5/13
w.	Federal 15-7D-64	Future Well	
x.	Federal 16-7D-64	Future Well	

(the "Subject Wells").

5. Petitioner has filed a Request for Agency Action in Docket No. 2014-004, Cause No. 272-03, seeking an order establishing drilling and spacing units for the Green River and Wasatch Formations for each of the 40-acre quarter-quarter sections (or equivalent governmental lots) in the Subject Lands. In that request, Petitioner has asked that the spacing order be made effective for each drilling unit as of the date of first production for each of the wells located in the respective drilling units or, for the wells that have not yet began producing, the date the spacing order is issued. The spacing request will be presented together with this force-pooling request.

6. Petitioner has sought to purchase the interests of or obtain the participation in the Subject Wells from all of the working interest owners in the Subject Lands. To date, Petitioner has been able to reach an agreement with all of the working interest owners except Burton/Hawks Inc. ("Burton"), which owns 21.875% of the working interest in depths below the base of the Green River Formation in the federal lease covering the Subject Lands. Petitioner has undertaken exhaustive efforts to locate Burton. However, these efforts have been unsuccessful. Petitioner has, therefore, deemed Burton to be unlocatable.

7. Utah Code Ann. 40-6-6.5, provides that the Board, "[i]n the absence of a written agreement for pooling...may enter an order pooling all the interests in the drilling unit for the

development and operation of the drilling unit.” The order “shall provide for the reimbursement to the consenting owners for any *nonconsenting* owner’s share of the costs....” *See id.* at (4)(b)(emphasis added). Under this statute, a non-consenting owner is defined as “an owner who after written notice does not consent in advance to the drilling and operation of a well or agree to bear his proportionate share of the costs.”

8. Because Burton is unlocatable, it could not be given written notice and could not consent in advance to the drilling and operation of any of the subject wells. Therefore, Burton is, by definition, a statutory non-consenting owner under Utah’s force-pooling statute.

9. In addition to recovering its costs, Petitioner is entitled to obtain a non-consent penalty between 150% and 300% of the non-consenting owner’s share of the costs of producing and operating the Subject Wells. Because of the substantial investment required and inherent risk involved in drilling the Subject Wells, Petitioner requests that the Board impose a non-consent penalty of 300% against Burton.

10. The order for this Request should be made effective as of the effective dates of the individual drilling and spacing units as set forth in the spacing request.

**WHEREFORE**, Petitioner respectfully requests that:

- A. This matter be set for hearing on May 28, 2014.
- B. That notice of such hearing be given as provided by law; and
- C. That the Board enter an order:

(i) pooling the interest of all parties and force-pooling the working interest of Burton in the drilling and spacing units established for production from the Green River and Wasatch Formations in the Subject Lands effective as of the effective dates for each of the drilling and spacing units.

(ii) declaring that Burton is a statutory non-consenting owner who has failed to bear its proportionate share of the costs of drilling and operation of the Subject Wells.

(ii) providing for the recovery of Burton's proportionate share of the costs of drilling and operation of the Subject Wells together with a non-consent penalty of 300% as just and reasonable compensation for the inherent risks in drilling and developing the Subject Wells.

(iii) adopting the terms of an operating agreement submitted by Petitioner;


(iv) establishing such other terms and conditions required by law, including establishing the costs of plugging and abandoning the wells and adopting a reasonable interest rate;

(v) making such findings and orders in connection with this Request as it deems necessary; and

(d) providing for such other and further relief as may be just and reasonable under the circumstances.

Respectfully submitted this 7th day of May, 2014.

**BERRY PETROLEUM COMPANY, LLC**

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